Supreme Court, U.S.
FILED
MAR 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1437

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

HENRIETTA K. THOMAS, Petitioner,

v.

BOARD OF EXAMINERS, Chicago Public Schools, et al.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

Henrietta K. Thomas, Pro Se
401 East 32nd Street, #1804
Chicago, Illinois 60616-4029
Home Phone: 312/842-6239
Work Phone: 312/332-2777

## QUESTIONS PRESENTED FOR REVIEW

1. What is the nature of the interest at stake when a local governmental agency denies an application for a school principal's certificate without affording the applicant (a) a fair and impartial hearing in a required oral interview, (b) the right to appeal the adverse outcome of the oral interview, or in the alternative, (c) an opportunity to apply for a second oral interview?

2. Whether a post-deprivation remedy of an opportunity to reapply for a principal's certificate at some indefinite later date satisfies the requirements of due process?

3. Whether the Court of Appeals followed proper procedure in reviewing the Fed. R. Civ. P. Rule 12(b)(6) dismissal of the instant case?

4. Whether intervening legislation abolishing the local governmental agency referred to in (1) above renders moot the instant case?

## PARTIES TO THE PROCEEDING IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Parties to the proceeding in the United States Court of Appeals were:

Henrietta K. Thomas, Plaintiff-Appellant.

Board of Examiners, Chicago Public Schools, and Board of Education of the City of Chicago, Defendants-Appellees.

## TABLE OF CONTENTS


REFERENCE TO OPINIONS BELOW ..... 2

JURISDICTION ..... 2

CONSTITUTIONAL AND STATUTORY PROVISIONS ..... 3

STATEMENT OF MATERIAL FACTS ..... 6

Background Information ..... 7

Summary of Petitioner's Claim ..... 8

The Rulings Below ..... 11

REASONS FOR GRANTING THE WRIT ..... 15

I. Certiorari Should Be Granted to Resolve the Disagreement Between the Courts Below as to the Nature of the Interest at Stake. ..... 15

II. Certiorari Should Be Granted to Determine the Process Due. ..... 16

III. Certiorari Should Be Granted to Determine if the Court of Appeals Followed Proper Procedure in Reviewing this Case. ..... 19

IV. Certiorari Should Be Granted to Decide Questions of Mootness. ..... 23

CONCLUSION ..... 28

AFFIDAVIT OF SERVICE ..... 29

## TABLE OF AUTHORITIES

*Appley v. West*, 832 F.2d 1021 (7th Cir. 1987) ..... 20

*Bigby v. City of Chicago*, 766 F.2d 1053 (7th Cir. 1985), *cert. denied sub nom. Thoele v. Chicago*, 474 U.S. 1056 (1986) ..... 11

*Board of Regents v. Roth*, 408 U.S. 564 (1972) ..... 15, 17

*Brewer v. Wegmann*, 691 F.2d 216 (5th Cir. 1982) (per curiam), *cert. denied*, 461 U.S. 908 (1983) ..... 12

*Conley v. Gibson*, 355 U.S. 41 (1957) ..... 20

*Dandridge v. Williams*, 397 U.S. 471 (1970) ..... 12

*Freitag v. Carter*, 489 F.2d 1377 (7th Cir. 1973) ..... 19

*Goldsmith v. United States Board of Tax Appeals*, 270 U.S. 117 (1926) ..... 16, 17

*Gomez v. Illinois State Board of Education*, 811 F.2d 1030 (7th Cir. 1987) ..... 21

*Haines v. Kerner*, 404 U.S. 519 (1973) ..... 20

*Hall v. City of Santa Barbaraa*, 833 F.2d 1270 (9th Cir. 1986) ..... 19

*Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621 (9th Cir. 1988) ..... 20

*Mahone v. Addicks Utility District of Harris County*, 836 F.2d 921 (5th Cir. 1988) ..... 19
*Martin-Trigona v. Stewart*, 691 F.2d 856 (8th Cir. 1982) ..... 20
*Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957) ..... 12
*Southern Pacific Terminal Co. v. Interstate Commerce Commission* 219 U.S. 498 (1911) ..... 26
*Thomas v. Board of Examiners*, 651 F.Supp. 664 (N.D. Ill. 1986) ..... 11, 12, 14, 15, 16, 18
*Thomas v. Board of Examiners*, No. 87-1086, slip op. (7th Cir. Jan. 11, 1989) ..... 14, 15, 16, 22
*Webster v. Redmond*, 599 F.2d 793 (7th Cir. 1979), *cert. denied*, 444 U.S. 1039 (1980) ..... 21-22
*Willner v. Committee on Character & Fitness*, 373 U.S. 96 (1963)..... 12, 16-17, 18
*Wilson v. Civil Town of Clayton, Indiana*, 839 F.2d 375 (7th Cir. 1988) ..... 20
*Zynn v. O'Donnell*, 688 F.2d 940 (3rd Cir. 1982) ..... 20

**CONSTITUTIONAL PROVISIONS AND STATUTES**

**United States Constitution**

Fourteenth Amendment ..... 3

**Federal Statutes**

42 U.S.C. § 1983 ..... 3-4

**State Statutes**

ILL. REV. STAT. ch. 24, para. 10-1-17 (1985) ..... 5, 7
ILL. REV. STAT. ch. 122, para. 21-1 (1985)..... 5, 7
ILL. REV. STAT. ch. 122, para. 34-8.1 (1985) ..... 5, 7, 24
ILL. REV. STAT. ch. 122, para. 34-83 (1985) ..... 5, 7
1985 ILL. LAWS, P.A. 84-126, Sec. 21-1 ..... 5, 8
1985 ILL. LAWS, P.A. 84-126, Sec. 21-1a ..... 5, 8
1985 ILL. LAWS, P.A. 84-126, Sec. 34-8.1 ..... 5, 8, 24
1985 ILL. LAWS, P.A. 84-126, Sec. 34-83 ..... 5, 8

**Local Rules and Regulations**

Circular of Information/Chicago Public Schools ..... 4

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

HENRIETTA K. THOMAS, Petitioner,

v.

BOARD OF EXAMINERS, Chicago Public Schools, et al.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

Petitioner Henrietta K. Thomas, acting pro se, respectfully prays that a writ of certiorari issue to review the judgment of The United States Court of Appeals for the Seventh Circuit entered in this matter on September 12, 1988, and the order appended thereto which was released as an opinion of that court on January 11, 1989.

## REFERENCE TO OPINIONS BELOW

The January 11, 1989 opinion of the Court of Appeals, whose judgment is herein sought to be reviewed, has not as yet been reported, but is reproduced in the separate Appendix to this petition at pp. 1-7. (The Court of Appeals' original unpublished order was reported at 860 F.2d 1082.) The prior memorandum opinion and order of The United States District Court for the Northern District of Illinois, Eastern Division, was reported at 651 F.Supp. 664 (N.D. Ill. 1986), and is reproduced in the Appendix at pp. 8-30.

## JURISDICTION

The judgment of the Court of Appeals was entered on September 12, 1988. A timely petition for rehearing was denied on November 4, 1988. On January 25, 1989, Justice John Paul Stevens entered an order extending the time for the filing of this petition to and including March 2, 1989.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Also involved is an Act of Congress, 42 U.S.C. § 1983, which provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action

at law, suit in equity, or other proper proceeding for redress.

The local governmental regulation originally sought to be enjoined is contained in a "Circular of Information" on certification requirements and procedures published by the Chicago public school system in 1982 and 1984, and reads in pertinent part as follows:

> Results of oral examinations will be reported to the candidate as "recommended" or "not recommended." Only candidates who have been recommended by the oral committee will be considered for certification. ORAL EXAMINATIONS ARE NOT SUBJECT TO REVIEW. Teachers who are not recommended in the oral examinations may apply for a second oral examination after a waiting period of six months but no longer than one year after the date of the original oral examination.
>
> This provision for a second oral does not apply to examination of principal.

Several provisions of Illinois law are relevant to this case, but because the text is rather lengthy, and because it is necessary to an understanding of the case to compare present and past law, these provisions are reproduced in the separate Appendix to this petition at pp. 33-43. They are:

ILL. REV. STAT. ch. 122, para. 21-1 (1985) (5th paragraph);

ILL. REV. STAT. ch. 122, para. 34-8.1 (1985);

ILL. REV. STAT. ch. 122, para. 34-83 (1985);

1985 ILLINOIS LAWS, PUBLIC ACT 84-126, Section 21-1 (5th paragraph);

1985 ILLINOIS LAWS, PUBLIC ACT 84-126, Section 34-8.1;

1985 ILLINOIS LAWS, PUBLIC ACT 84-126, Section 21-1a;

1985 ILLINOIS LAWS, PUBLIC ACT 84-126, Section 34-83;

ILL. REV. STAT. ch. 24, para. 10-1-17 (1985).

## STATEMENT OF MATERIAL FACTS

This is a Fourteenth Amendment civil rights action brought in the United States District Court for the Northern District of Illinois, Eastern Division, on November 14, 1985, pursuant to 42 U.S.C. § 1983 under jurisdiction of 28 U.S.C. § 1331(a), 1343(3), and 1343(4), to challenge the constitutionality of certain rules and regulations governing the certification of principals by the Chicago public school system. Both the original complaint and an amended complaint filed on May 15, 1986 sought declaratory, injunctive, and equitable relief plus damages against the Board of Examiners, Chicago Public Schools, and the Board of Education of the City of Chicago for violating petitioner's Fourteenth Amendment due process and equal protection rights when they denied her a principal's certificate in 1983 without affording her (a) a fair and impartial hearing in a required oral interview, (b) an opportunity to appeal the adverse outcome of the oral interview, or in the alternative, (c) the same opportunity to apply for a second oral interview as was offered to applicants for teacher's certificates.

## Background Information

The State of Illinois has, for many years, had a dual certification system for public school teachers and administrators. Those who wanted to work outside the City of Chicago had to have state certificates issued pursuant to Article 21, Sections 21-2 to 21-24 of the Illinois School Code, while those who wanted to work in the Chicago public school system had to obtain certificates from the Chicago Board of Education. See ILL. REV. STAT. ch. 122, para. 21-1 (1985) (5th paragraph), App. at 33.

Certificated school personnel are exempt from the civil service law in Illinois. ILL. REV. STAT. ch. 24, para. 10-1-17 (1985), App. at 42-43.

The Chicago Board's authority to issue teaching and administrative certificates is found at Sections 34-83 and 34-8.1 of the Illinois School Code, see ILL. REV. STAT. ch. 122, para. 34-83 and 34-8.1 (1985), App. at 33-35, and the Board of Examiners, originally established by the Illinois General Assembly in 1917, has traditionally conducted the examinations for both types of certificates.

The Board of Examiners was abolished by the Illinois General Assembly effective July 1, 1988. 1985 ILL. LAWS, P.A. 84-126, Sec. 34-83, App. at 40-42. Now, all prospective Chicago public school teachers and administrators are required to hold state certificates. 1985 ILL. LAWS, P.A. 84-126, Sec. 21-1, 21-1a, App. at 35-36, 37-40. But the Chicago Board of Education is still authorized to issue administrative certificates to holders of state certificates who want to work in the Chicago public school system. 1985 ILL. LAWS, P.A. 84-126, Sec. 34-8.1, App. at 36-37. These changes in the law were not before either of the courts below because petitioner was not aware of their existence until after the Board of Examiners held its final principal's certificate examination shortly before July 1, 1988. (Petitioner did not take part in that examination because she didn't know it had been scheduled.) They are reported here because they raise questions of mootness which may affect the outcome of this case.

**Summary of Petitioner's Claim**

On January 6, 1983, petitioner applied for a Chicago principal's certificate and paid the

required $50.00 examination fee. To obtain the certificate, she had to pass both a written examination and an oral interview. Petitioner passed the written examination at the 99th percentile, but failed the oral interview and was not certified.

At her oral interview on August 12, 1983, petitioner was asked to respond to three problem situations—a teacher with a "suspicious" attendance record, an administrative assignment to a "bad" high school, and a parental complaint of teacher brutality. On the first and last of these questions, one of the interviewers—Mrs. Josephine C. Logan-Woods, a Chicago public school principal—repeatedly interrupted petitioner's responses with rapid-fire barrages of repetitive, irrelevant questions such as "What if he says it's legitimate? What if he says it's legitimate? What if he says it's legitimate?" and "What if he denies it? What if he denies it? What if he denies it?" which effectively prevented petitioner from completing her responses to the problem situation(s). The other members of the interview panel—Dr. Joseph W. Lee, a District Superintendent, and a Mr. Walker, whose identity is unknown to petitioner—

made no effort to curtail this type of questioning, although Dr. Lee did appear to "rescue" petitioner from further onslaught at one point. Petitioner had no opportunity to express her objections to this type of questioning because (a) Mrs. Logan-Woods abruptly terminated the interview before petitioner had finished her closing remarks, and (b) all candidates were required to leave the building immediately after their interviews.

On August 26, 1983, Dr. Morton L. Elenbogen, vice-chairman of the Board of Examiners, presented a list of 168 "recommended" candidates to the Board of Education for approval. Petitioner was not among those recommended for certification.

On September 3, 1983, petitioner met with Dr. Elenbogen to discuss the oral interview. She was advised that she had failed the oral interview because her responses to the first and third questions were "not acceptable" to the oral interview committee. Dr. Elenbogen declined to give petitioner any further information as to the reasons for denial. When petitioner asked about appeal rights, Dr. Elenbogen advised her that, under the Board's rules, (a) oral examinations are not subject to

review, and (b) applicants for principal's certificates are not allowed to apply for second orals.

Petitioner made no further effort to obtain review of the denial of her application for a Chicago principal's certificate, but subsequently filed suit in the United States District Court alleging that the policies and procedures governing the certification of prospective Chicago public school principals deprived her of her Fourteenth Amendment due process and equal protection rights.

See amended complaint, App. at 44-55.

**The Rulings Below**

The district court construed the amended complaint as alleging a denial of occupational liberty, *Thomas v. Board of Examiners,* 651 F.Supp. 664, 668 (N.D. Ill. 1986), App. at 17-18, but decided that petitioner was not denied due process because:

(a) following *Bigby v. City of Chicago*, 766 F.2d 1053 (7th Cir. 1985), *cert. denied sub nom. Thoele v. Chicago*, 474 U.S. 1056, 106 S.Ct. 793, 88 L.Ed.2d 771 (1986), petitioner was not entitled to a "fair" examination, 651 F.Supp. at 670, App. at 23-25, and

(b) following *Brewer v. Wegmann*, 691 F.2d 216 (5th Cir. 1982) (per curiam), *cert. denied*, 461 U.S. 908, 103 S.Ct. 1881, 76 L.Ed.2d 811 (1983), petitioner is not denied due process so long as she "is not foreclosed from reentering the process for obtaining a principal's certificate." 651 F.Supp. at 670-71, App. at 25-27.

The district court further stated that petitioner could not state a claim under either *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963), or *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957), because (a) "there were no adverse charges or accusations of any kind made against her," 651 F.Supp. at 668-69, App. at 19-20, and (b) the petitioner "makes no claim that the reasons or evidence defendants relied upon were not rationally related to the standards of fitness and competence that the defendants may require of principals." 651 F.Supp. at 669, App. at 20-21.

As to the equal protection claim, the district court applied the rational basis test outlined in *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970), and concluded that there was a rational basis for

the differential treatment of prospective Chicago public school teachers and principals in regard to the oral examination.

First, the duties of a principal are different from and may be considered weightier than those of a teacher. There is increased responsibility over students, other teachers, and administration. See Ill. Rev. Stat. ch. 122, ¶¶34-8.1 and 21-1a. Moreover, in many cases an applicant for a regular teaching certificate who fails the oral examination may still teach in a classroom on a provisional certificate. See Ill. Rev. Stat. ch. 122, ¶21-1, 21-10. Such a person may continue to grow professionally, even after failing an oral examination. It is therefore rational for defendants, who are interested in quality teachers, to allow unsuccessful teacher applicants to reapply for an oral examination (without having to retake and pass the written test) after a period of six months from the initial failure. By contrast, an unsuccessful candidate for a principal's certificate may not provisionally supervise a school in Chicago, there being no authority for the provisional certification of principals. It is therefore rational for defendants to require that principal applicants, who seek jobs of relatively weightier responsibility, be put to a greater task before they may be orally examined a second time. That is, they must

> demonstrate that they are still competent on the written examination before they are granted (i.e., invited to) another oral examination. Thus, because the differential treatment of teacher and principal applicants bears a rational relation to the legitimate state interest in obtaining quality members of the school work force, plaintiff's equal protection claim must fail.

*Thomas*, 651 F.Supp. at 671-672, App. at 28-29.

The Court of Appeals apparently agreed with the district court's analysis of the equal protection claim. *Thomas v. Board of Examiners*, No. 87-1086, slip op. at 4-5 (7th Cir. Jan. 11, 1989), App. at 7 ("we do not find the groups to be so similar as to require identical treatment."). But it affirmed the dismissal of the due process claim on entirely different grounds—that, following *Bigby, supra*, "the denial of a promotion within a given occupation does not infringe liberty of occupation[.]" *Id.*, slip op. at 4, App. at 6.

## REASONS FOR GRANTING THE WRIT

### I.

### Certiorari Should Be Granted to Resolve the Disagreement Between the Courts Below as to the Nature of the Interest at Stake.

This Court said, in *Board of Regents v. Roth*, 408 U.S. 564, 571, 92 S.Ct. 2701, 33 L.Ed.2d 548, 557 (1972), that "the *nature* of the interest at stake" (emphasis in original) determines whether due process applies in a given case.

In applying this principle of law, the courts below arrived at two different, mutually exclusive, determinations. The district court said that petitioner had been deprived of occupational liberty, 651 F.Supp. at 668, App. at 17-18, but the Court of Appeals said she had been denied an opportunity for a promotion. *Thomas*, slip op. at 4, App. at 5-6.

Both courts cannot be correct. A complaint which fairly alleges a deprivation of occupational liberty cannot, at the same time, fairly allege a denial of a promotion.

The Court of Appeals attempted to resolve this by stating that the district court merely

*assumed* the existence of a liberty interest, *Id.*, slip op. at 3, App. at 4, but the district court's statement was quite clear:

> Since defendants here are able to prevent plaintiff from becoming a principal by denying her a principal's certificate, they are denying plaintiff her liberty interest in her occupational pursuit of becoming a principal.

*Thomas*, 651 F.Supp. at 668, App. at 18. This was not an assumption; it was a statement of fact based on Illinois law, the allegations of the amended complaint, and occupational licensing case law. And it should have been affirmed by the Court of Appeals.

## II.

## Certiorari Should Be Granted to Determine the Process Due.

The district court faulted the petitioner for "[failing] to delineate what sort of process is due in a case like the instant one." *Thomas*, 651 F.Supp. at 668, App. at 19. Petitioner thought the process due was obvious from this Court's decisions in *Goldsmith v. United States Board of Tax Appeals*, 270 U.S. 117, 46 S.Ct. 215, 70 L.Ed. 494 (1926), *Willner v. Com-*

*mittee on Character & Fitness*, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963), and *Board of Regents v. Roth, supra.*

> [Petitioner] should not have been rejected upon charges of his unfitness without giving him an opportunity by notice for hearing and answer. The rules adopted by the board provide that "the board may in its discretion deny admission, suspend or disbar any person." But this must be construed to mean the exercise of a discretion to be exercised after fair investigation, with such a notice, hearing and opportunity to answer for the applicant as would constitute due process.

*Goldsmith*, 270 U.S. at 123.

> Petitioner was clearly entitled to notice of and a hearing on the grounds for his rejection either before the Committee or before the Appellate Division.

*Willner*, 373 U.S. at 105 (citing *Goldsmith, supra*).

> When protected interests are implicated, the right to *some kind of prior hearing* is paramount.

*Roth*, 408 U.S. at 570. (emphasis added).

But petitioner here did not have any kind of notice or hearing before her application was denied. The district court agreed that the

petitioner had been deprived of occupational liberty, but then said that's okay, you don't need a pre-deprivation remedy because you have a post-deprivation remedy—you can retake the written examination later on, and if you do well, you will be invited to another oral interview, and this will give you another chance to prove your qualifications. *Thomas*, 651 F.Supp at 670-671, App. at 25-27. This is not due process, but an invitation to the petitioner to spend the rest of her professional life applying and reapplying for a Chicago principal's certificate in the hope of someday meeting an oral interview committee which will give her a fair hearing, thereby running the risk of being denied over and over again, and never knowing why she was rejected. This is exactly what happened to Willner when he applied for admission to the New York bar. See *Willner*, 373 U.S. at 100-102. And this Court, upon reviewing his case, agreed that he had been denied procedural due process. *Id.*, at 104-106.

Petitioner believes that (a) the district court erred in its determination of the process due, and (b) the Court of Appeals should have remanded for a proper determination in light

of *Freitag v. Carter*, 489 F.2d 1377 (7th Cir. 1973), where the district court declared Chicago's Public Chauffer's Licensing Ordinance unconstitutional because "it does not provide for adequate notice and hearing procedures in the event of disapproval of an application for a chauffer's license[,]" *id.* at 1383, and a Seventh Circuit Court of Appeals, relying on *Willner, Schware*, and *Goldsmith, supra*, flatly stated:

> A governmental licensing board which judges the fitness of an applicant must afford that applicant adequate notice and a hearing.

*Freitag*, 489 F.2d at 1382.

## III.

## Certiorari Should Be Granted to Determine if the Court of Appeals Followed Proper Procedure in Reviewing this Case.

Motions to dismiss for failure to state a claim are disfavored in the law. *Mahone v. Addicks Utility District of Harris County*, 836 F.2d 921, 926 (5th Cir. 1988); *Hall v. City of Santa Barbara*, 833 F.2d 1270, 1274 (9th Cir.

1986). This Court has made it clear, in particular, that *pro se* litigants are entitled to the benefit of a doubt in the construction of pleadings, *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652, 654 (1973), and that dismissals should not be granted or affirmed "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84 (1957). These are the rules in the Seventh Circuit. *Wilson v. Civil Town of Clayton, Indiana*, 839 F.2d 375, 378 (7th Cir. 1988). And in other circuits as well. *See, e.g., Zynn v. O'Donnell*, 688 F.2d 940, 941 (3rd Cir. 1982); *Martin-Trigona v. Stewart*, 691 F.2d 856, 858 (8th Cir. 1982); *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988). But petitioner has no way of knowing whether the rules were applied in her case.

The usual procedure, on reviewing a Rule 12(b)(6) dismissal, is for the Court of Appeals to conduct a *de novo* review of the complaint. *Appley v. West*, 832 F.2d 1021, 1030 (7th Cir. 1987). The reason for the dismissal must clearly appear on the face of the complaint.

*Gomez v. Illinois State Board of Education*, 811 F.2d 1030, 1039 (7th Cir. 1987). Yet here, the Court of Appeals makes no mention of the allegations of petitioner's amended complaint. It decided that a "promotion" was at issue here rather than an occupational license, but does not tell its readers how it came to that conclusion, or why it could not endorse the district court's finding that petitioner had been deprived of occupational liberty.

The word "promotion" appears only once in petitioner's amended complaint, at paragraph 10, in a citation to Illinois law:

> Article 34, Section 84 of The School Code of Illinois requires that "[a]ppointments and promotions of teachers, principals, and other educational employees [in the Chicago public school system] shall be made for merit only . . ."

See App. at 47. But the primary focus of the complaint was on the fact that petitioner had been denied a principal's *certificate*. The issuance of a certificate is not an entitlement to a job, but merely entitles the holder to *apply* for a job in the professional area covered by the certificate. *Webster v. Redmond*, 599 F.2d 793, 801 (1979), *cert. denied*, 444 U.S. 1039 (1980)

("There is thus no indication in Illinois law that possession of a certificate . . . means anything more than that one is to be placed on the eligibility list and considered at the appropriate time by the Board of Education."). The certification process and the hiring process are two separate actions. *Id.* ("[T]he Board of Education as a separate entity is to have the final word and power of [appointment or] promotion or denial over those candidates who have been certified to it by the Board of Examiners."). There is no justification for combining the two into a single act. *Id.* ("The statute states that [appointments and] promotions shall be made by the Board [of Education], and by no other.") Yet this is what the Court of Appeals has done.

Petitioner submits, therefore, that the Court of Appeals erred in making its determination that petitioner was not deprived of occupational liberty. Petitioner never said she was "seeking a promotion from public school teacher to principal" when she applied for a principal's certificate, as the Court of Appeals suggests, *Thomas*, No. 87-1086, slip op. at 2, App. at 2, and there is nothing in the

amended complaint from which such a motivation could be fairly inferred.

## IV.

## Certiorari Should Be Granted to Decide Questions of Mootness.

As stated earlier in this petition, see p. 8, the Board of Examiners was abolished by the Illinois General Assembly effective July 1, 1988, and is no longer authorized to conduct certification examinations for the Chicago public school system. As a result of this change in Illinois law, petitioner will never again be subjected to an unfair certification process at the hands of the Board of Examiners. Petitioner expects that the respondents here will seek dismissal of this petition on mootness grounds. But petitioner does not think the case is moot.

Section 34-8.1 of the Illinois School Code still requires prospective Chicago public school principals to "hold a valid supervisory or administrative certificate issued by the board of education in accordance with standards established by the general superintendent with the approval of the board of

education." *Compare* ILL. REV. STAT. ch. 122, para. 34-8.1 (1985) (App. at 33-34) *with* 1985 ILL. LAWS, P.A. 84-126, Section 34-8.1 (App. at 36-37). It is conceivable that, at some point in time, the Chicago Board of Education could decide to enforce that statute by establishing another in-house principal certification process similar to the one previously enforced by the Board of Examiners. Prospective Chicago public school principals would then be required to submit to two different certification systems—one administered by the state, one administered by the Chicago Board of Education—and successfully acquire two administrative certificates before he or she could apply for an administrative position in the Chicago public school system.

The chances of this happening appear to be fairly good. The entire Board of Examiners' staff was recently transferred to the Board of Education's personnel department and renamed the Bureau of Employee Eligibility. In this new role, it has established new examination procedures for prospective teachers which duplicate prior procedures, the only difference being that the Bureau of

Employee Eligibility does not issue teaching certificates. These new procedures were outlined in a Chicago Sun-Times newspaper article dated October 17, 1988.

According to the Sun-Times article, prospective Chicago public school teachers, who now are required to hold state certificates, are being subjected to additional written tests of basic skills as well as oral interviews conducted by the Bureau of Employee Eligibility before they may be considered for employment in the school system. Those who pass the additional tests are granted "regular" status in the school system, but those who cannot meet the extra requirements are limited to substitute teaching positions.

If the Chicago Board of Education is going to this much trouble to "screen" state-certified teachers, it is logical to expect that they will seek to enforce Section 34-8.1 at some point in time. And since there are no laws or court decisions to deter them, the Board is likely to re-institute the very same procedures complained of in the instant case. Written and oral examinations could be given, the oral committees will have the final say on who is

or is not certified, and there will be no right of appeal or other form of redress.

This Court's test for mootness centers on a determination whether the practices complained of are "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498, 515, 36 S.Ct. 279, 55 L.Ed. 310, 316 (1911). Under this test, two elements are required to save a case from mootness: (1) the challenged action must be in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there must be a reasonable expectation that the same complaining party would be subjected to the same action again. Petitioner believes the instant case meets this test.

First, the time frame for conducting a principal's certificate examination is quite short—less than a year from time of initial application to final decision. There is no way to get a case through the court system in that short period of time.

Second, it was about a year and a half between the time petitioner's original complaint was filed in the District Court in November, 1985 and the Board of Examiners'

expiration date of July 1, 1988. Even if petitioner had known from the beginning that the Board of Examiners was due to expire on a certain date, there was still not enough time to get a decision on her case before that date arrived. The briefs on petitioner's appeal to the Seventh Circuit Court of Appeals were not completed until April, 1987, and the Court of Appeals' decision was not handed down until September 12, 1988.

Third, it is now approximately eight months since the Board of Examiners' term of office expired, and this Court has yet to hear the case.

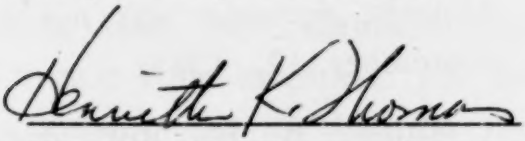
Finally, as stated above, petitioner has no reason to believe that the Chicago Board of Education will not enforce the provisions of Section 34-8.1 of the Illinois School Code by authorizing the Bureau of Employee Eligibility to conduct principal's certificate examinations.

So long as this remains a possibility, petitioner submits that the conduct complained of in the instant case is "capable of repetition, yet evading review," and the instant case is not moot.

## CONCLUSION

For the reasons stated in this petition, petitioner respectfully prays that a writ of certiorari be granted.

Respectfully submitted,



Henrietta K. Thomas, Pro Se

Dated this 28th day of February, 1989.

## AFFIDAVIT OF SERVICE

Pursuant to Rule 28.5(c), Rules of the Supreme Court of the United States, Henrietta K. Thomas, being first duly sworn, deposes on oath and states that she served the foregoing PETITION FOR WRIT OF CERTIORARI and Appendix appended thereto on all parties required to be served by depositing three copies in the United States mail, with first-class postage prepaid, addressed as follows to counsel of record for the respondents:

Patricia J. Whitten, Attorney at Law
Chicago Board of Education
1819 West Pershing Road
Chicago, Illinois 60609

on Tuesday, February 28, 1989, at the United States Post Office, 211 South Clark Street, Chicago, Illinois 60604.

_____

Henrietta K. Thomas, Pro Se

Subscribed and Sworn to before me this 28th day of February, 1989.

_____

Notary Public

88-1437

Supreme Court, U.S.
FILED
MAR 1 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

HENRIETTA K. THOMAS, Petitioner

v.

BOARD OF EXAMINERS, Chicago Public Schools,
and BOARD OF EDUCATION OF THE CITY OF CHICAGO.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

# APPENDIX TO
# PETITION FOR WRIT OF CERTIORARI

Henrietta K. Thomas, Pro Se
401 East 32nd Street, #1804
Chicago, Illinois 60616-4029
Home Phone: 312/842-6239
Work Phone: 312/332-2777

TABLE OF CONTENTS


| | | Page |
|---|---|---|
| I. | January 11, 1989 Opinion of the United States Court of Appeals for the Seventh Circuit. | 1-7 |
| II. | November 19, 1986 Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois, Eastern Division. | 8-30 |
| III. | September 12, 1988 Judgment of the United States Court of Appeals for the Seventh Circuit. | 31 |
| IV. | November 4, 1988 Denial of Petition for Rehearing. | 32 |
| V. | Statutory Provisions/Illinois Law. | 33-43 |
| VI. | Amended Complaint. | 44-55 |

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 87-1086

HENRIETTA K. THOMAS,

*Plaintiff-Appellant,*

v.

BOARD OF EXAMINERS, Chicago Public Schools, et al.,

*Defendants-Appellees.*

DATE OF ENTRY: SEPTEMBER 12, 1988
OPINION: JANUARY 11, 1989*

Before POSNER, MANION and KANNE, *Circuit Judges.*

PER CURIAM. Henrietta K. Thomas instituted this suit under 42 U.S.C. § 1983 against the Board of Examiners of the Chicago Public School System, and the Chicago Board of Education for violating her rights of due

---

* This appeal was originally decided by unreported order on September 12, 1988. *See* Circuit Rule 53. The Court has subsequently decided to issue the decision as an opinion.

process and equal protection under the Fourteenth Amendment when Thomas' application for a principal's certificate was denied. The district court, on November 19, 1986, granted the defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6). Thomas' motion to amend judgment was denied on December 12, 1986. This appeal followed.

I.

Thomas, seeking a promotion from public school teacher to principal, participated in the 1983 Chicago Principal's Examination in order to secure the required principal's certificate. *See* ILL. REV. STAT. ch. 122, para. 34-8.1 (1983). The certification process consists of both a written examination and an oral interview. Thomas passed the written portion of the examination with a score in the 99th percentile and, as a result, she was "invited" to submit to the oral examination.

In the oral examination conducted on August 12, 1983, a panel of three interviewers questioned the plaintiff on three problem situations. The selected panelists were administrators within the Chicago school system, and their questions were designed to measure the applicant's ability to manage personnel and to exercise leadership, as well as the extent of the candidate's interpersonal

skills. According to Thomas, one of the interviewers continually interrupted Thomas' responses to the first and third questions by badgering her with repetitive and irrelevant questions. Thomas claims that this line of conduct impeded her performance. She notes that, for the most part, the other interviewers did nothing to prevent this, although one did "rescue" her on one occasion. At the end of the interview, the plaintiff was required to leave the building immediately and so she could not express her opinion of the interview process.

The panel did not recommend Thomas for certification. As a result, Thomas has been ineligible to apply for administrative vacancies within the Chicago public school system. On September 3, 1983, Thomas met with Dr. Morten L. Elenbogen, the vice-chairman of the Board of Examiners, to discuss the results of the oral examination. Apparently, Dr. Elenbogen told Thomas that the panel rated her responses to the first and third questions as unacceptable. Thomas also learned that although the Board's rules allow unsuccessful teacher-applicants to apply for a second examination after a waiting period of six months, unsuccessful candidates for the principal's certificate are ineligible to apply for a second oral examination. There is no appeal from the denial of a principal's certificate.

Thomas filed suit against the Board of Examiners and the Chicago Board of Education to challenge the Board's rules, asking for declaratory and injunctive relief as well as damages. The district court granted the defendants' motion to dismiss for failure to state a claim. *Thomas v. Board of Examiners, Chicago Public Schools,* 651 F.Supp. 664 (N.D. Ill. 1986). In its order, the court determined that the plaintiff had no property interest in the promotion. However, the court believed that the principal's certificate may be considered an occupational license which Thomas would have a liberty interest in pursuing. Notwithstanding this assumption, the court concluded that the Board's screening procedures did not deny Thomas due process under the law. As for the plaintiff's equal protection claim, the court determined that there was a rational basis to support the Board's differing procedures for unsuccessful principal-applicants.

II.

On appeal, Thomas complains that the oral examination was conducted unfairly. She also claims that she should have been allowed to appeal the adverse test result and/or given an opportunity to take a second oral examination. Under the Fourteenth Amendment, the state cannot deprive anyone

of life, liberty, or property without due process of law. *Board of Regents v. Roth,* 408 U.S. 564, 569 (1972). To establish a valid due process claim, Thomas must therefore show that the Board has deprived her of either a liberty or property right. The nature of the interest determines whether due process requirements will apply. *Roth,* 408 U.S. at 571.

Although property rights in employment can be created by ordinance or by implied contract, *Bishop v. Wood,* 426 U.S. 341, 344 (1976), neither of these situations is present here. The Board's rules explicitly state that oral examinations are not subject to review and that candidates for the principal's certificate are not entitled to a second oral test. Furthermore, Thomas cannot point to any implied contract rights with respect to the examination process since the applicant is required to pass an oral interview as well as the written examination. Thomas clearly had no property entitlement to the promotion. *See Yatvin v. Madison Metropolitan School District,* 840 F.2d 412, 417 (7th Cir. 1988) (entitlement to consideration for a job promotion is not property in the constitutional sense).

Similarly, we find that no liberty interest has been implicated under these facts.

Thomas stresses that she has been denied the opportunity to pursue her occupation. *See, e.g., Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976); *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957). Courts have recognized a limited protection for liberty of occupation. *Bigby v. City of Chicago*, 766 F.2d 1053, 1057 (7th Cir. 1985), *cert. denied sub nom. Thoele v. Chicago*, 474 U.S. 1056 (1986). As noted in *Bigby*, however, the denial of a promotion within a given occupation does not infringe liberty of occupation:

> while preventing someone from advancing in his occupation can be a cruel deprivation, it would stretch the idea of liberty of occupation awfully far . . . to treat a bar to promotion as a deprivation of that liberty.

*Bigby*, 766 F.2d at 1057. *See also Webster v. Redmond*, 599 F.2d 793 (7th Cir. 1979), *cert. denied*, 444 U.S. 1039 (1980)(rejecting claim that denial of promotion from teacher to principal is a denial of liberty or property).

Thomas also raises an equal protection argument. She asserts that applicants for teaching and principal certificates are similarly situated, and therefore, both groups should be accorded identical treatment. She believes that unsuccessful principal-applicants should have the opportunity to submit to a second oral interview. We

disagree. First, we do not find the groups to be so similar as to require identical treatment. More importantly, not every difference in promotion treatment rises to the level of a deprivation of equal protection. *Clark v. Whiting*, 607 F.2d 634, 638 (4th Cir. 1979). Indeed, when an exclusion from a professional opportunity is challenged on equal protection grounds, this court will not second-guess state decisions on occupational licensure. *Illinois Psychological Association v. Falk*, 818 F.2d 1337, 1341 (7th Cir. 1987)(citing *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483 (1955).

For these reasons, the district court's order dismissing the plaintiff's case for failure to state a claim is hereby

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HENRIETTA K. THOMAS,

*Plaintiff,*

v.

BOARD OF EXAMINERS, Chicago Public Schools, et al.,

*Defendants.*

No. 85 C 9647

DATE OF ENTRY: NOVEMBER 19, 1986

MEMORANDUM OPINION AND ORDER

Before the court is the joint motion of defendants Board of Examiners of the Chicago Public Schools and Board of Education of the City of Chicago to dismiss this civil rights action of plaintiff Henrietta K. Thomas brought pursuant to 42 U.S.C. § 1983. Plaintiff is a former Chicago public school teacher. Defendant Board of Examiners is an

administrative unit within the Chicago public school system created to administer and supervise teacher and principal certification examinations.[1] Defendant Board of Education is a unit of local government created to maintain and operate the Chicago public school system. It has the ultimate authority on appointment and promotions of teachers and principals. Ill.Rev.Stat. ch. 122, ¶34-8. Taking all factual allegations of the complaint as true, and applying the relevant Supreme Court and Seventh Circuit law, the court concludes for the reasons herein that the complaint must be dismissed.

The complaint essentially claims that the manner in which the defendants denied plaintiff a principal's certificate violated her constitutional rights to due process and equal protection. Specifically, on January 6, 1983, plaintiff submitted to defendants a properly completed application for the 1983 Chicago

---

[1] Actually, Ill.Rev.Stat. ch. 122, ¶34-83 creates a "Board of Examiners" to hold teacher examinations and issue teacher certificates to those who pass. The literal wording of ¶34-83 suggests that the Board of Examiners' powers do not extend to principal certification. Nonetheless, this statute has been interpreted to provide the Board of Examiners with both teacher and principal certification powers. *See Kenny v. Interim General Superintendent of Schools*, 445 N.E.2d 356, 360 (1st Dist. 1983).

Principal's Examination, along with the required $50.00 examination fee. Plaintiff was one of 1575 principal's certificate candidates who qualified to take the written examination. Defendants conducted the examination on May 28, 1983. Plaintiff passed this examination "on merit" at the 99th percentile.

In July, 1983, plaintiff was one of 218 candidates invited by defendants to take the necessary oral examination. Chicago public school administrators conducted the oral examinations in August, 1983. Plaintiff's individual oral interview was held from 9:00 to 9:45 a.m. on August 12, 1983. The interview was conducted by three panelists—Dr. Joseph W. Lee, then District 24 Superintendent; Mrs. Josephine C. Logan-Woods, Principal of Betsy Ross Elementary School in District 13, and a Mr. Walker. During the examination, plaintiff was asked to respond to three different problem situations—a teacher with a "suspicious" attendance record, an administrative assignment to a "bad" high school, and a parental complaint of teacher brutality.

During two of these problem situations, the first and the last, Mrs. Logan-Woods repeatedly interrupted plaintiff's responses with a "rapid-fire barrage of repetitive,

irrelevant questions" such as "what if he says it's legitimate; what if he says it's legitimate; what if he says it's legitimate," and "what if he denies it; what if he denies it; what if he denies it." This form of questioning effectively prevented plaintiff from responding to the problem situations. Dr. Lee, the nominal chair of the panel, only once appeared to "rescue" plaintiff from this "onslaught" of questions. Mr. Walker did nothing during the entire examination except ask only one follow-up question.

At the close of the interview, plaintiff was prevented from expressing her objections to Mrs. Logan-Woods' tactics because Mrs. Logan-Woods abruptly terminated the proceedings before plaintiff had finished her closing remarks. Plaintiff and all other interview candidates were then asked to leave the building after their interviews pursuant to established procedure.

On August 26, 1983, Dr. Morton Elenbogen of the Board of Examiners presented a list of 168 "recommended" candidates for Board of Education approval. Plaintiff was not among those recommended for this principal certification. On September 3, 1983, plaintiff discussed the principal's examination with Dr. Elenbogen who advised plaintiff that she had failed both the first and third questions on

the oral examination because, in his words, the responses were "not acceptable" to the oral committee. He declined to further explain why her responses were not acceptable. Plaintiff then asked Dr. Elenbogen about her appeal rights. He explained that under the Board's rules, which are published in a document entitled "Circular of Information," oral examinations are not subject to review. He further explained that although teachers who are not recommended for certification after the oral examination may apply for a second oral examination after a six-month waiting period, this provision for a second oral examination does not apply to principal applicants. Consequently, plaintiff received no appeal or second examination.

Plaintiff now claims that the harshness of her interview, the unavailability of review, and the unavailability of a second oral examination, all combined to deprive her of her fourteenth amendment right to due process. She also claims that the right to a second oral examination for teacher candidates without a similar right for principal candidates is disparate treatment that violates the equal protection clause. Finally, plaintiff concludes that these alleged constitutional violations have kept plaintiff off the principal "eligibility list" since she has no certificate, and in Illinois a certificate is

needed to hold the position of principal. Ill.Rev.Stat. ch. 122, ¶8.1. As a result of these alleged constitutional infirmities, she has been deprived "of an opportunity to apply for more than 50 administrative vacancies which have been filled from the 1983 principal's eligibility list over the past two and one-half years." Plaintiff requests declaratory, injunctive and damage relief. The court now addresses the merits of each constitutional claim.

## LEGAL DISCUSSION

### I. The Due Process Claim

Plaintiff contends that the examination procedure for principal certification deprives her of a property and a liberty interest without due process of law. Because the due process inquiry varies for property and liberty deprivations, those deprivations and interests need to be addressed separately.

#### A. Property Interest

In order for plaintiff to state a claim based on defendants' deprivation of plaintiff's property interest without due process of law, plaintiff must first identify the property interest of which she was allegedly deprived. The decisions of the United States Supreme Court in *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972); and *Bishop v. Wood*, 426 U.S. 341

(1976), elucidate the parameters for determining whether a person has a property in the public employment context.

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. . . . Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

*Roth*, 408 U.S. at 577.

> A person's interest in a benefit is a "property" interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing.

*Sindermann*, 408 U.S. at 601.

> A property interest in employment can, of course, be created by ordinance, or by an implied contract. In either case, however,

> the sufficiency of the claim of entitlement must be decided by reference to state law.

*Bishop v. Wood*, 426 U.S. at 344.

The question then, in this case is whether under Illinois state law plaintiff had a legitimate expectation or mutual understanding with the defendants that she would become entitled to a principal's certificate (thereby acquiring placement on the eligibility list) after attending the oral examination. If she had no such expectation, then she has no property interest and the federal due process guarantees are not triggered.

Plaintiff here points to no provision in Illinois state law (and certainly no contract) which suggests that she did have a legitimate expectation of receiving a principal's certificate after the examination. The only state law provision which arguably relates to plaintiff's alleged property interest is found in Ill.Rev.Stat. ch. 122 ¶34-83.

> A board of 3 examiners shall examine all applicants required to hold certificates to teach and the board of education shall issue gratuitously *to those who pass* a required test of character, scholarship and general fitness, such certificates to teach as they are found entitled to receive. (emphasis added).

As stated earlier, this provision has been interpreted to apply to principals as well as teachers, see *Kenny v. Interim General Superintendent of Schools,* 445 N.E.2d at 360 ("The only two certificates which the Board [of Examiners] issues [under ¶34-83] are the teacher's certificate and the principal's certificate."). Thus, under the state law, once a person has been deemed to pass the relevant test, then but only then is she entitled to a principal's certificate. State law gives her no entitlement to the certificate *prior* to passing the test. Furthermore, an applicant has no legitimate expectation of passing merely because she attends the oral examination. Indeed, if such were the case the oral examination would serve absolutely no purpose. Thus, the defendants had the power to refuse to give plaintiff a principal's certificate after she failed the examination because, having never passed it, at no time before, during, or after the examination did she acquire a property interest in a principal's certificate. A contrary conclusion could be reached only if the relevant state law guaranteed all applicants for principal certificates a certificate simply because they applied for one. In that case, if the law also provided that one could be deprived of a certificate by subsequently failing an examination, then and only then would due

process apply to the examination procedure. Illinois law, however, confers no such entitlements. Accordingly, plaintiff was not deprived of property without due process of law.

B. Liberty Interest

Plaintiff's stronger constitutional claim is based on her liberty interest in pursuing the occupation of principal. "There is indeed a concept of liberty of occupation." *Bigby v. City of Chicago,* 766 F.2d 1053, 1057 (7th Cir. 1985), *cert. denied,* 106 S.Ct. 793 (1986), and the Supreme Court has continually recognized that when the state excludes a person from employment, it is depriving that person of this liberty interest. *See, e.g., Hampton v. Mow Sun Wong,* 426 U.S. 88 (1976); *Schware v. Board of Bar Examiners,* 353 U.S. 232, 238 (1957); *Truax v. Raich,* 239 U.S. 33, 41 (1915). Important examples of this liberty interest are cases sustaining due process challenges to the procedures used to determine whether an applicant is qualified to be licensed to practice law. See *Willner v. Committee on Character & Fitness,* 373 U.S. 96 (1963); *Schware v. Board of Bar Examiners,* 353 U.S. 232 (1957). The significance of these cases is that "[a] State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal

Protection Clause of the Fourteenth Amendment." *Willner*, 373 U.S. at 102 (quoting *Schware*, 353 U.S. at 238-39). Since defendants here are able to prevent plaintiff from becoming a principal by denying her a principal's certificate, they are denying plaintiff her liberty interest in her occupational pursuit of becoming a principal. In order for the defendants to accomplish this deprivation constitutionally, they must provide her with due process. Of course, the due process requirement has two components, procedure and substance. The procedural component requires that the mechanism for deciding that the plaintiff is not qualified to be a principal be designed so that accurate results are fairly likely. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). It also has a substantive component which requires that the grounds upon which principalship may be denied be substantively fair. See *Daniels v. Williams*, 106 S.Ct. 662, 665 (1986). Plaintiff places her exclusive emphasis on the procedural component.

The procedure used for determining whether plaintiff was to receive a principal's certificate consisted of the written and oral examinations, both of which must be passed for certification. Plaintiff claims that due process requires more. She argues that (1) the oral interview should not be so harshly

inquisitive, (2) the results of the oral examination should be reviewable, and (3) a second oral examination should be available, all as a matter of federal constitutional right. The court must reject this claim. Although plaintiff cites cases which require the application of due process to state licensing boards, she fails to delineate what sort of process is due in a case like the instant one. Of course, the type of process that is due varies according to the interests and risks involved. *See, e.g., Mathews v. Eldridge,* 424 U.S. at 335; *Morrissey v. Brewer,* 408 U.S. 471, 481 (1972). The court concludes that in this case the process provided is sufficient.

First, the sort of process which the Supreme Court required in *Willner* and *Schware* is inapplicable here. In *Willner,* the plaintiff sought to be licensed to practice law. The Character and Fitness Committee refused to certify him for licensing without affording him an opportunity to confront and cross-examine those individuals whose statements led to the refusal to certify. "In a situation such as this," 373 U.S. at 104, the need for confrontation is a necessary element of due process. *Id.* Quite understandably, the requirement of due process is most urgent when a person needs some type of hearing to controvert adverse charges. *See Bigby,* 766 F.2d at 1058 ("The usual though not exclusive

modern meaning of the term [due process] is notice of charges and an opportunity for a hearing appropriate to the nature and gravity of those charges." (the other meaning is the substantive one)). That was Willner's situation. However, it is clearly not plaintiff's. Here, there were no adverse charges or accusations of any kind made against her. *Willner*, therefore, does not support plaintiff's claim that she was entitled to more process.

Similarly, the due process requirements of *Schware* have no relevance here. In that case, the Court held that due process forbids a state board of bar examiners from excluding a bar applicant from the bar for reasons that have no rational connection to the applicant's ability to practice law. Such unacceptable reasons included past arrests and membership in the Communist Party. Thus, this was essentially a substantive due process case. Here, plaintiff makes no claim that the reasons or evidence defendants relied upon were not rationally related to the standards of fitness and competence that the defendants may require of principals. At best, she only argues that the harsh "barrage" of questions prevented her from best demonstrating her abilities. But this does not mean—and indeed plaintiff does not even argue—that the evidence the defendants did rely on to deny plaintiff certification, including her inability

to respond to the barrage of questions, was not rationally related to the substantive qualifications for the position of principal. Thus, it is difficult to see from plaintiff's citation to *Willner, Schware,* and similar cases why she is entitled to the particular procedures she desires: a less harshly inquisitive oral examination, review of the oral examination, and a second oral examination.[2]

Second and more critical is the view of the Seventh Circuit on the matter of both substantive and procedural due process. In *Bigby v. City of Chicago,* 766 F.2d 1053, 1057-58 (7th Cir. 1985), *cert. denied,* 106 S.Ct. 793 (1986), the Court rejected a constitutional challenge to an examination used to determine which police officers would be promoted in rank. Certain test-takers

---

[2] Indeed, it is interesting to note that although plaintiff cites the dissenting opinion of Justice Frankfurter in *Barsky v. Board of Regents,* 347 U.S. 442, 470 (1954), for a general proposition of due process in the employment licensing context, she overlooks another statement of the Justice earlier in his opinion. "[T] here is nothing in the United States Constitution which requires a State to provide for judicial review of the action of [its licensing] agencies." *Id.* Evidently then, the very Justice upon whom plaintiff relies takes a dim view of the proposition that due process requires review of licensing decisions.

complained that the test was unfair because it was not reasonably related to the actual needs of the position tested for. Therefore, they argued, it violated due process. The Court construed this claim as predicated upon substantive due process, see *id.* at 1058, because, in the Court's view, the claim attacked the "substantive criteria for promotion." *Id.* According to the Court, the test-takers wanted the defendants to utilize different standards for determining who would get promoted. They sought a standard that was "reasonably related to the actual needs of the position for which they applied." *Id.*

The Court held that, assuming there was a liberty interest in getting promoted in police rank, substantive due process was not violated by test standards which bore no relation to the needs of the promotional position. *Id.* This may be inconsistent with other decisions which have held that the grounds for admission to an occupation must bear some rational connection with an applicant's fitness or capacity to practice that profession. See, *e.g.*, *Schware,* 353 U.S. at 239; *Whitfield v. Illinois Board of Law Examiners,* 504 F.2d 474 (7th Cir. 1974); *Attwell v. Nichols,* 608 F.2d 228 (5th Cir. 1979), *cert. denied,* 446 U.S. 955 (1980); *Chaney v. State Bar of California,* 386 F.2d 962 (9th Cir.

1967), *cert. denied,* 391 U.S. 929 (1968). It may be possible to reconcile these other cases with *Bigby* on the grounds that the liberty interest in getting promoted (which is what *Bigby* involved) is so much weaker than the interest in entering an occupation (which is what the others involved) that substantive due process is not implicated.

In any event, it also seems plausible to read *Bigby* as implicitly rejecting a procedural due process claim to a "fair" examination. In general, procedural due process is implicated whenever there is a claim that the procedures used for determining whether certain substantive standards have been met are not sufficiently reliable. *See, Mathews v. Eldridge,* 424 U.S. at 334-35; *Miller v. Henman,* No. 86-1035, slip op. at 10 (7th Cir. Oct. 31, 1986)("The function of procedure is to increase the likelihood that decisions concerning substantive entitlements will be accurate."). Such a claim seems to have been raised and rejected in *Bigby.* "A civil service examination unfair in the sense . . . of being a stupidly designed test hopelessly maladapted to the purposes for which it is being given" does not violate due process. *Bigby,* 766 F.2d at 1058. Put another way, an examination which does a bad job of measuring what it is supposed to measure (i.e., the substantive criteria) does not violate

due process. While this language is potentially far-reaching, this court reads it as standing only for the proposition that federal due process does not require that state examinations meet some federally dictated standard of accuracy before they are no longer vulnerable to a due process attack. The court does not read this language as authorizing the states to utilize examinations which purport to measure competence but yield results which are totally arbitrary, capricious, or random with respect to competence. Such a result would be contrary to the teaching of *Schware*, 353 U.S. at 246-47 (character evidence which bears no rational relation to "moral unfitness" may not be relied upon by state to exclude bar membership on that ground), and other Seventh Circuit decisions; see *Whitfield v. Illinois Board of Law Examiners,* 504 F.2d 474, 477 (7th Cir. 1974)(there may be situations in which the arbitrary grading of a bar examination gives rise to a federal remedy).

Under this interpretation of the Seventh Circuit law, plaintiff's claim must fail. Her disagreement with the way her oral examination was conducted amounts to nothing more than, at best, an assertion that the interview was not conducted in the best possible way for assessing her qualifications.

Even if it were true that the defendants' examination techniques could be improved in the sense that the instances of badgering the plaintiff prevented her from displaying her competence, the court cannot say that this rendered the entire examination an arbitrary and completely irrational way to measure principal competence. Indeed, the "badgering" may have served the rational purpose of seeing how plaintiff responded to problems under enormous stress. The conduct of the oral interview, therefore, did not violate procedural due process. See, *Whitfield,* 504 F.2d at 476. (the fact that an examination technique may keep an "exceptionally qualified individual" from an occupation is not grounds for declaring it violative of due process).

A similar conclusion applies to the lack of review or a second oral examination. In *Brewer v. Wegmann,* 691 F.2d 216 (5th Cir. 1982)(per curiam), *cert. denied,* 461 U.S. 908 (1983), the Fifth Circuit held that a bar examination procedure which included the destruction of examinations after grading and which thereby denied a failing applicant the opportunity to examine her application or to obtain review did not violate due process. Significantly, the Court approved of the procedure because the applicant had the right to retake the examination at a later date. *Id.*

at 217. *Accord Tyler v. Vickery,* 517 F.2d 1089 (5th Cir. 1975), *cert. denied,* 426 U.S. 940 (1976); *Whitfield, supra.* Here, plaintiff has alleged that she was not allowed to apply for a second oral examination after having failed her first. However, it appears from her complaint that she may nevertheless become eligible for a second oral examination, not by applying for one, but by retaking the written examination and scoring well enough to be reinvited to take an oral examination. According to the complaint, plaintiff's score on the written examination caused her to be "invited" to take the oral examination. Complaint at ¶¶13, 14. Thus, plaintiff did not apply for her original oral interview; she was invited to it. In contrast, plaintiff also alleges that under the examination procedures which were applied to her, "[t]eachers who are not recommended in the oral examinations may apply for a second oral examination . . . [but] this provision for a second oral examination does not apply to examination for principal." *Id.* at ¶¶26, 27. Thus, as this court understands the allegations, plaintiff may not "apply" for a second oral examination after having failed her first. However, nothing prevents her from retaking the written examination, and if she passes, she will then be "invited" to take an oral examination. Since plaintiff has not alleged that she is no longer

able to pass the written examination, and since she has not alleged that she may not take a second *written* examination, the reasonable conclusion is that she can readily get herself invited to another oral interview. (Plaintiff certainly has not argued that being required to take a second written examination would be unduly or irrationally burdensome.) In short, then, plaintiff is not foreclosed from reentering the process for obtaining a principal's certificate. In these circumstances, like those in *Brewer,* the absence of review constitutes no denial of due process.[3]

II. The Equal Protection Claim

Plaintiff argues that the defendants' procedures for testing principal applicants violates the equal protection clause. Specifically, she argues that the defendants impermissibly treat teacher certificate and principal certificate applicants differently by allowing the former to "apply" for a second oral examination but not the latter, even though both are "similarly situated" in the sense that both have failed the original oral interview. The court rejects this argument.

---

[3] The court intimates no view on whether the absence of a right to take a second written examination, thereby affecting plaintiff's ability to get invited to a second interview, would implicate procedural due process concerns.

Pursuit of a particular occupation is not a "fundamental right" for purposes of equal protection strict scrutiny. *Miller v. Carter,* 547 F.2d 1314, 1320 (7th Cir. 1977) (Campbell, J., concurring), *aff'd* 434 U.S. 356 (1978); see also *Massachusetts Board of Retirement v. Murgia,* 427 U.S. 307 (1976). Nor, of course, are applicants for the job of principal members of a "suspect class." *See, e.g.,* the suspect classes identified in *Loving v. Virginia,* 388 U.S. 1 (1967) (race); *Graham v. Richardson,* 403 U.S. 365 (1971) (alienage); *Oyama v. California,* 332 U.S. 633 (1948) (ancestry or nationality); *Frontiero v. Richardson,* 411 U.S. 677 (1973) (possibly gender). In the absence of a state classification which impinges on a fundamental right or suspect class, equal protection requires only that the classification bear some rational relation to a legitimate state purpose. There is such a relationship here. *See Dandridge v. Williams,* 397 U.S. 471 (1970).

First, the duties of a principal are different from and may be considered weightier than those of a teacher. There is increased responsibility over students, other teachers, and administration. See Ill.Rev.Stat. ch. 122, ¶¶34-8.1 and 21-1a. Moreover, in many cases an applicant for a regular teaching certificate who fails the oral examination may still teach

in a classroom on a provisional certificate. See Ill.Rev.Stat. ch. 122, ¶21-1, 21-10. Such a person may continue to grow professionally, even after failing an oral examination. It is therefore rational for defendants, who are interested in quality teachers, to allow unsuccessful teacher applicants to reapply for an oral examination (without having to retake and pass the written test) after a period of six months from the initial failure. By contrast, an unsuccessful candidate for a principal's certificate may not provisionally supervise a school in Chicago, there being no authority for the provisional certification of principals. It is therefore rational for defendants to require that principal applicants, who seek jobs of relatively weightier responsibility, be put to a greater task before they may be orally examined a second time. That is, they must demonstrate that they are still competent on the written examination before they are granted (i.e., invited to) another oral examination. Thus, because the differential treatment of teacher and principal applicants bears a rational relation to the legitimate state interest in obtaining quality members of the school work force, plaintiff's equal protection claim must fail.

## CONCLUSION

The defendants' joint motion to dismiss plaintiff's due process and equal protection claims is granted in its entirety. This action is dismissed.

It is so ordered.

JUDGMENT — WITHOUT ORAL ARGUMENT
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
September 12, 1988

HENRIETTA K. THOMAS,

Plaintiff-Appellant,

v.

BOARD OF EXAMINERS, CHICAGO PUBLIC SCHOOLS, et al.,

Defendants-Appellees.

No. 87-1086

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 85 C 0965 (sic). Judge Susan Getzendanner.

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this Court entered this date.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
November 4, 1988

HENRIETTA K. THOMAS,

Plaintiff-Appellant,

v.

BOARD OF EXAMINERS, CHICAGO PUBLIC SCHOOLS, et al.,

Defendants-Appellees.

No. 87-1086

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 85 C 9647
Susan Getzendanner, Judge

ORDER

On consideration of the petition for rehearing with suggestion for rehearing en banc filed in the above-entitled cause by plaintiff-appellant, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

ILL. REV. STAT. (1985), ch. 122, par. 21-1 (5th paragraph):

No one may teach or supervise in the public schools nor receive for teaching or supervising any part of any public school fund, who does not hold a certificate of qualification granted by the State Board of Education or by the State Teacher Certification Board and a regional superintendent of schools as hereinafter provided, or by the board of education of a city having a population exceeding 500,000 inhabitants except as provided in Section 10-22.34 or Section 10-22.34b. However, the provisions of this Article do not apply to a member of the armed forces who is employed as a teacher of subjects in the Reserve Officer's Training Corps of any school. Sections 21-2 through 21-24 do not apply to cities having a population exceeding 500,000 inhabitants.

ILL. REV. STAT. (1985), ch. 122, par. 34-8.1:

Principals shall be employed to supervise the educational operation of attendance centers as the board shall determine necessary. If a principal is absent due to extended illness or leave of absence, an assistant principal may be assigned as acting

principal for a period not to exceed 100 school days. Each principal shall assume administrative responsibility and instructional leadership, under the supervision of the general superintendent and in accordance with reasonable rules and regulations of the board, for the planning, operation and evaluation of the educational program of the attendance area to which he is assigned. He shall submit recommendations to the general superintendent concerning the appointment, retention, promotion and assignment of all educational personnel assigned to the attendance center.

Each principal shall hold a valid supervisory or administrative certificate issued by the board of education in accordance with standards established by the general superintendent with the approval of the board of education.

ILL. REV. STAT. (1985), ch. 122, par. 34-83:

A board of 3 examiners shall examine all applicants required to hold certificates to teach and the board of education shall issue gratuitously to those who pass a required test of character, scholarship and general fitness, such certificates to teach as they are found entitled to receive. The board of examiners shall consist of the general superintendent

and 2 persons approved and appointed by the board of education upon the nomination of the general superintendent of schools. The board of examiners shall hold such examinations as the board of education may prescribe, upon the recommendation of the general superintendent of schools and shall prepare all necessary eligible lists, which shall be kept in the office of the general superintendent of schools and be open to public inspection. Members of the board of examiners shall hold office for a term of 2 years.

1985 ILLINOIS LAWS, PUBLIC ACT 84-126, Section 21-1 (5th paragraph):

No one may teach or supervise in the public schools nor receive for teaching or supervising any part of any public school fund, who does not hold a certificate of qualification granted by the State Board of Education or by the State Teacher Certification Board and a regional superintendent of schools as hereinafter provided, or by the board of education of a city having a population exceeding 500,000 inhabitants except as provided in Section 10-22.34 of Section 10-22.34b. However, the provisions of this Article do not apply to a member of the armed forces who is employed as a teacher of

subjects in the Reserve Officer's Training Corps of any school. Sections 21-2 through 21-24 do not apply to cities having a population exceeding 500,000 inhabitants, *until July 1, 1988. Effective July 1, 1988, the provisions of Sections 21-2 through 21-25 shall apply equally in all school districts, including any school district operating under Article 34, except as otherwise provided by subsection (b) of Section 21-9.**

1985 ILLINOIS LAWS, PUBLIC ACT 84-126, Section 34-8.1:

Principals shall be employed to supervise the educational operation of attendance centers as the board shall determine necessary. If a principal is absent due to extended illness or leave of absence, an assistant principal may be assigned as acting principal for a period not to exceed 100 school days. Each principal shall assume administrative responsibility and instructional leadership, under the supervision of the general superintendent and in accordance with reasonable rules and regulations of the board, for the planning, operation and evaluation of the educational program of the

* Italics indicate changes in the law passed by the Illinois General Assembly July 2, 1985, and approved by the Governor August 1, 1985.

attendance area to which he is assigned. He shall submit recommendations to the general superintendent concerning the appointment, retention, promotion and assignment of all educational personnel assigned to the attendance center.

Each principal shall hold a valid supervisory or administrative certificate issued by the board of education in accordance with standards established by the general superintendent with the approval of the board of education. *Such standards shall be subject to the provisions of Section 21-1a.*

1985 ILLINOIS LAWS, PUBLIC ACT 84-126, Section 21-1a:

*(a) After July 1, 1988, in addition to all other requirements, early childhood, elementary, special, high school, school service personnel, or administrative certificates shall be issued to persons who have satisfactorily passed a test of basic skills and subject matter knowledge. The tests of basic skills and subject matter knowledge shall be the tests which from time to time are designated by the State Board of Education in consultation with the State Teacher Certification Board and may be tests prepared by an educational testing organization or tests designed by the State Board of Education in*

*consultation with the State Teacher Certification Board. The areas to be covered by the test of basic skills shall include the basic skills of reading, writing, grammar and mathematics. The test of subject matter knowledge shall assess content knowledge in the specific subject field. The tests shall be designed to be racially neutral to assure that no person in taking the tests is thereby discriminated against on the basis of race, color, national origin or other factors unrelated to the person's ability to perform as a certificated employee. The score required to pass the tests of basic skills and subject matter knowledge shall be fixed by the State Board of Education in consultation with the State Teacher Certification Board. The tests shall be held not fewer than 3 times a year at such time and place as may be designated by the State Board of Education in consultation with the State Teacher Certification Board.*

*(b) The provisions of subsection (a) of this Section shall apply equally in any school district subject to Article 34, provided that the State Board of Education shall determine which certificates issued under Sections 34-8.1 and 34-83 prior to July 1, 1988 are comparable to any early childhood certificate, elementary school certificate, special certificate, high school certificate, school service personnel certificate or administrative*

*certificate issued under this Article as of July 1, 1988.*

*(c) A person who holds an early childhood, elementary, special, high school or school service personnel certificate issued under this Article on or at any time before July 1, 1988, including a person who has been issued any such certificate pursuant to Section 21-11.1 or in exchange for a comparable certificate theretofore issued under Section 34-8.1 or Section 34-83, shall not be required to take or pass the tests in order to thereafter have such certificate renewed.*

*(d) The State Board of Education in consultation with the State Teacher Certification Board shall conduct a pilot administration of the tests by administering the test to students completing teacher education programs in the 1986-87 school year for the purpose of determining the effect and impact of testing candidates for certification.*

*(e) The rules and regulations developed to implement the required test of basic skills and subject matter knowledge shall include the requirements of subsections (a), (b), and (c) and shall include specific regulations to govern test selection; test validation and determination of a passing score; administration of the tests; frequency of*

*administration; applicant fees; frequency of applicants' taking the tests; the years for which a score is valid; and, waiving certain additional tests for additional certificates to individuals who have satisfactorily passed the test of basic skills and subject matter knowledge as required in subsection (a).*

1985 ILLINOIS LAWS, PUBLIC ACT 84-126, Section 34-83:

A board of 3 examiners shall examine all applicants required to hold certificates to teach and the board of education shall issue gratuitously to those who pass a required test of character, scholarship and general fitness, such certificates to teach as they are found entitled to receive. The board of examiners shall consist of the general superintendent of schools and 2 persons approved and appointed by the board of education upon the nomination of the general superintendent of schools. The board of examiners shall hold such examinations as the board of education may prescribe, upon the recommendation of the general superintendent of schools and shall prepare all necessary eligible lists, which shall be kept in the office of the general superintendent of schools and be open to public inspection. Members of the board of

examiners shall hold office for a term of 2 years.

*The board of examiners created herein is abolished effective July 1, 1988. Commencing July 1, 1988, all new teachers employed by the Chicago Board of Education shall hold teaching certificates issued by the State Teacher Certification Board under Article 21. The State Board of Education in consultation with the board of examiners and the State Teacher Certification Board shall develop procedures whereby teachers currently holding valid certificates issued by the board of examiners, and all teachers employed by the Chicago Board of Education after the effective date of this amendatory Act of 1985 and prior to July 1, 1988, shall no later than July 1, 1988 exchange certificates issued by the board of examiners for comparable certificates issued by the State Teacher Certification Board. On the exchange of a certificate on or before July 1, 1988, the State Teacher Certification Board shall not require any additional qualifications for the issuance of the comparable certificate. If prior to July 1, 1988 the board of examiners has issued types of teaching certificates which are not comparable to the types of certificates issued by the State Teacher Certification Board, such certificates shall continue to be valid for and shall be renewable by the holders thereof,*

*and no additional qualifications shall be required by the State Teacher Certification Board for any such renewal.*

*The State Board of Education shall report by July 1, 1986, to the Illinois General Assembly on the procedures for exchange it has developed in consultation with the board of examiners and the State Teacher Certification Board as required in this Section.*

ILL. REV. STAT. (1985), ch. 24, par. 10-1-17:

Officers who are elected by the people, or who are elected by the corporate authorities pursuant to the municipal charter, or whose appointment is subject to confirmation by the corporate authorities, judges of election, members of any board of education, the superintendent and teachers of schools, the employees of any welfare department, heads of any principal department of the municipality, the chief librarian of the public library, members of the law department, police officers above the grade of captain, police cadets, a health officer appointed after July 1, 1953, seasonal employees which means those persons whose employment does not exceed 90 days in any calendar year, one deputy and one private secretary of each of the elected municipal officials and the municipal manager, and administrative

assistants to the mayor or municipal manager, shall not be included in such classified service, except that the chief of the police department may be included in the classified service if the corporate authorities so provides by ordinance.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HENRIETTA K. THOMAS,

*Plaintiff,*

v.

BOARD OF EXAMINERS, Chicago Public Schools, and BOARD OF EDUCATION OF THE CITY OF CHICAGO,

*Defendants.*

Civil Action 85 C 9647
Judge Susan Getzendanner

AMENDED COMPLAINT

I. NATURE OF CASE

1. This action arises under The Constitution of the United States, in particular the due process and equal protection clauses of the Fourteenth Amendment thereto, and the laws of the United States, in particular The Civil Rights Act of 1871, 42 USC 1983, which creates a cause of action for the deprivation of rights secured by the Constitution "under

color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . ."

## II. JURISDICTION

2. The jurisdiction of this Court is invoked under 28 USC 1331(a), 28 USC 1343(3), and 28 USC 1343(4), this being a suit authorized and instituted pursuant to The Civil Rights Act of 1871, 42 USC 1983, which provides for the redress of grievances where deprivation of constitutional rights occurs under color of state law.

## III. PARTIES

3. Plaintiff, Henrietta K. Thomas, is a resident of the City of Chicago, County of Cook, State of Illinois, and a former Chicago public school teacher.

4. Defendant, Board of Examiners, Chicago Public Schools, is an administrative unit within the Chicago public school system created by the Illinois state legislature in 1917 to administer and supervise teacher certification examinations for the Board of Education of the City of Chicago.

5. Defendant, Board of Education of the City of Chicago, is a unit of local government created by the Illinois state legislature in 1857 to maintain and operate the Chicago public school system.

6. Defendants conduct their business entirely within the corporate limits of the City of Chicago, County of Cook, State of Illinois.

## IV. STATEMENT OF CLAIM

7. Article 21, Section 1 of The School Code of Illinois provides that "[n]o one may teach or supervise in the public schools . . . who does not hold a certificate of qualification granted by the State Board of Education . . . the State Teacher Certification Board . . . [or] the board of education [of the City of Chicago]."

8. The Board of Examiners, Chicago Public Schools, is authorized, under Article 34, Section 83 of The School Code of Illinois, to "examine all applicants required to hold certificates to teach" by holding "such examinations as the board of education may prescribe" and the Board of Education of the City of Chicago is required to "issue gratuitously to those who pass a required test of character, scholarship, and general fitness, such certificates as they are found entitled to receive."

9. Chicago public school principals are required, under Article 34, Section 8.1 of The School Code of Illinois, to hold "a valid supervisory or administrative certificate issued by the board of education in accordance with

standards established by the general superintendent with the approval of the board of education."

10. Article 34, Section 84 of The School Code of Illinois requires that "[a]ppointments and promotions of teachers, principals, and other educational employees [in the Chicago public school system] shall be made for merit only . . ."

11. On or about January 6, 1983, Plaintiff submitted to Defendants a properly completed application for the 1983 Chicago Principal's Examination, along with the required $50.00 examination fee, in accordance with an "Announcement of Examination for Certificate of Principal" published by Defendants in November 1982.

12. Plaintiff was one of 1575 principal's certificate candidates who qualified to take the written examination, which was conducted by Defendants on May 28, 1983, at Lane Technical High School.

13. Plaintiff subsequently passed the written examination "on merit" at the 99th percentile.

14. In July, 1983, Plaintiff was one of 218 candidates invited by Defendants to take part in the oral examinations, which were conducted by Chicago public school adminis-

trators the week of August 8-12, 1983 at Juarez High School.

15. Plaintiff's oral interview, which was held from 9:00 to 9:45 a.m. on August 12, 1983, was conducted by three panelists—Dr. Joseph W. Lee, then District 13 Superintendent; Mrs. Josephine C. Logan-Woods, Principal of Betsy Ross Elementary School in District 13; and a Mr. Walker, whose identity is not known to Plaintiff.

16. Plaintiff was asked to respond to three different problem situations—a teacher with a "suspicious" attendance record, an administrative assignment to a "bad" high school, and a parental complaint of teacher brutality.

17. On two of these questions—the first and the last—Mrs. Logan-Woods repeatedly interrupted Plaintiff's responses with rapid-fire barrages of repetitive, irrelevant questions ("What if he says it's legitimate? What if he says it's legitimate? What if he says it's legitimate?" and "What if he denies it? What if he denies it? What if he denies it?") which effectively prevented Plaintiff from responding to the problem situation(s).

18. Dr. Lee, the nominal "chair" of the panel, made no attempt to prevent this continued "badgering" of Plaintiff by Mrs. Logan-woods, and only once appeared to "rescue" Plaintiff from further onslaught.

19. Mr. Walker was basically a non-participant, asking only one follow-up question during the entire 45 minutes.

20. At the close of the interview, Plaintiff was prevented from expressing her objections to Mrs. Logan-Woods' heavy-handed tactics by Mrs. Logan-Woods, who abruptly terminated the proceedings before Plaintiff had finished her closing remarks.

21. Defendants' requirement that all candidates leave the building immediately after their interviews effectively precluded further protest by Plaintiff.

22. On August 26, 1983, Dr. Morton L. Elenbogen, Vice-chairman of the Board of Examiners, Chicago Public Schools, presented a list of 168 "recommended" candidates to the Board of Education for approval.

23. Plaintiff was not among those recommended for certification.

24. On or about September 3, 1983, Plaintiff discussed the principal's examination with Dr. Elenbogen, who advised Plaintiff that she had "failed" both the first and third questions on the oral examination because her responses were "not acceptable" to the oral committee, but would not tell Plaintiff why her responses were not acceptable.

25. When Plaintiff asked about appeal rights, Dr. Elenbogen responded that, under

rules and regulations established by Defendants, principal's certificate candidates could not appeal either the written or oral examination results, and were not entitled to apply for second oral examinations.

26. The rules and regulations to which Dr. Elenbogen referred are listed on pages 6-7 of a "Circular of Information" published by Defendants in September 1982, in pertinent part as follows:

> (A) [Written] [e]xaminations are not subject to review.
>
> (B) ORAL EXAMINATIONS ARE NOT SUBJECT TO REVIEW.
>
> (C) Only candidates who have been recommended by the oral committee will be considered for certification.
>
> (D) Teachers who are not recommended in the oral examinations may apply for a second oral examination after a waiting period of six months but no longer than one year after date of the original examination.
>
> (E) This provision for a second oral does not apply to examination for principal.

27. These same rules and regulations may be found, with only minor changes, on pages 6-7 of a new "Circular of Information of the Board of Examiners" published by Defendants in September 1984.

28. These rules and regulations, which have been in force for many years, are:

(A) inconsistent with the general certification laws of the State of Illinois which, under Article 21, Sections 21.1 and 24 of The School Code of Illinois, provide for appeal and review of both (1) universities' denials of recommendations for otherwise qualified candidates for state certificates and (2) final administrative decisions of the state level certifying agencies; and

(B) a clear violation of the Fourteenth Amendment rights of all applicants "required to hold certificates to teach" in that (1) unlimited authority is granted to the oral committees in deciding who shall or shall not be certified by the Chicago Board of Education, (2) the right of appeal is denied to all candidates, and (3) principal's certificate candidates, in particular, are denied an opportunity to apply for second oral examinations.

29. Defendants' delegation of final authority in the certification process to the oral committees constitutes an unlawful violation, under color of state law, of all candidates' Fourteenth Amendment due process rights in that this practice effectively removes all

incentive for the oral committees to ensure candidates a fair and impartial hearing.

30. Defendants' denial of the right of appeal constitutes an unlawful violation, under color of state law, of all candidates' Fourteenth Amendment due process rights in that this practice effectively deprives all candidates of any opportunity whatsoever to appeal adverse outcomes and/or to initiate grievances against oral committees which may have denied them a fair and impartial hearing.

31. Defendants' denial to principal's certificate candidates of an opportunity to apply for second oral examinations constitutes an unlawful violation, under color of state law, of all principal's certificate candidates' Fourteenth Amendment equal protection rights in that this practice singles out principal's certificate candidates for differential treatment based solely on the type of certificate sought, and not on any bona fide "business necessity" for denying second orals to principal's certificate candidates.

32. As a candidate for certification in the 1983 Chicago Principal's Examination, Plaintiff was denied her Fourteenth Amendment due process rights when, on August 12, 1983, the oral committee failed to give her a fair and

impartial hearing and subsequently declined to recommend her for certification.

33. As a candidate for certification in the 1983 Chicago Principal's Examination, Plaintiff was denied her Fourteenth Amendment due process rights when, on September 3, 1983, she was informed by Dr. Elenbogen that she had no appeal rights.

34. As a candidate for certification in the 1983 Chicago Principal's Examination, Plaintiff was denied her Fourteenth Amendment equal protection rights when, on September 3, 1983, she was informed by Dr. Elenbogen that she could not apply for a second oral examination.

35. Defendants' promulgation, enforcement, and continued adherence to these unconstitutional rules and regulations has already deprived Plaintiff of an opportunity to apply for more than 50 administrative vacancies which have been filled from the 1983 principal's eligibility list over the past two and one-half years, and will continue to so deprive Plaintiff until the 1983 principal's eligibility list is exhausted.

36. Defendants' continued reliance on these unconstitutional rules and regulations also threatens to again deprive Plaintiff of her Fourteenth Amendment due process and equal protection rights in any future

principal's certificate examinations in which she might wish to participate.

WHEREFORE, Plaintiff prays for relief as follows:

1. That the right of Chicago principal's certificate candidates to due process and the equal protection of the laws in the administration and supervision of the Chicago Principal's Examination be adjudicated and declared;

2. That Defendants and/or their agents be permanently restrained and enjoined from violating the Fourteenth Amendment rights of Chicago principal's certificate candidates in future examinations;

3. That Defendants be required to revise current policies and practices for the administration and supervision of the Chicago Principal's Examination so as to ensure to all candidates their due process and equal protection rights under the Fourteenth Amendment to the United States Constitution;

4. That Defendants be required, in all future examinations, to advise principal's certificate candidates of their constitutional rights to due process and the equal protection of the laws;

5. That Plaintiff be awarded reasonable attorney's fees in accordance with the

provisions of The Civil Rights Attorney's Fees Award Act of 1976, 42 USC 1988;

6. That Plaintiff be awarded damages incident to the equitable relief requested, in the sum of not less than $2550.00, to represent:

(A) A refund of the $50.00 examination fee paid by Plaintiff to Defendants on January 6, 1983; and

(B) An additional $50.00 for each administrative vacancy filled since August 26, 1983 for which Plaintiff would have been eligible to apply if Plaintiff had been recommended for certification at that time.

7. That Plaintiff have such other relief as to the Court may seem appropriate, including costs and expenses.

---

Henrietta K. Thomas, In Pro Se
401 East 32nd Street, #1804
Chicago, Illinois 60616

Home Phone: 312/842-6239
Bus. Phone: 312/353-7002

Dated this 15th day of May, 1986.